

Bankruptcy Frequently Asked Questions (FAQs)

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While the information presented above is accurate as of the date of publication, it should not be cited or relied upon as legal authority. It is highly recommended that legal advice be obtained from a bankruptcy attorney or legal association. For filing requirements, please refer to the [United States Bankruptcy Code \(title 11, United States Code\)](#), the [Federal Rules of Bankruptcy Procedure \(Bankruptcy Rules\)](#), and the [Local Rules of the United States Bankruptcy Court for the District of Kansas](#).

1. What is bankruptcy?

Bankruptcy is a way for people or businesses ("debtors") who owe more money than they can pay right now, to either work out a plan to repay the money over time in a chapter 11, chapter 12, or chapter 13 case, or wipe out ("discharge") most of their bills in a chapter 7 case. While either the debtor is working out a plan or the trustee is gathering the available assets to sell, the Bankruptcy Code requires creditors to stop all collection efforts against the debtor. When the bankruptcy petition is filed, you are immediately protected from your creditors. What chapter you choose to file under, what bills can be eliminated, how long payments can be stretched out, what possessions you can keep, and other details are controlled by the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure. These are federal laws, which means they apply all over the United States. The Code is located in Title 11 of the United States Code. The various sections of the Bankruptcy Code are referred to throughout this booklet as "11 U.S.C. § ____."

2. Who can start a bankruptcy?

Any person, partnership, corporation or business trust may file a bankruptcy. If the person or entity who owes the money, referred to as the debtor, files a petition to start the bankruptcy, it is called a voluntary bankruptcy. If the people or entities owed the money, referred to as the creditors, start the bankruptcy by filing a petition against a person or an entity who owes them money, it is called an involuntary bankruptcy. In an involuntary case, the debtor gets a chance to contest the petition and contend it should not be in bankruptcy. Voluntary cases can be filed under chapters 7, 9, 11, 12, and 13. Involuntary cases can only be filed under chapters 7 and 11. Certain types of entities, such as banks and insurance companies, may not be eligible to file bankruptcy; however, almost all other entities can file a bankruptcy. A business that is NOT a partnership, corporation or business trust, cannot file a separate bankruptcy on its own. Those assets and debts would be included in the personal bankruptcy of the owner(s).

3. What is a joint petition?

A joint petition is the filing of a single petition by an individual and the individual's spouse. Only people who are married on the date they file may file a joint petition. Unmarried persons, corporations and partnerships must each file a separate case. If you are an individual and have a business which is not a partnership, corporation or business trust, you should list the business as a "dba" (doing business as) on your petition. However, yours will not be considered a joint petition because the business is not an independently-recognized legal entity.

4. What are the different "chapters" in bankruptcy?

Chapter 7 is the liquidation chapter of the Bankruptcy Code. Chapter 7 cases are commonly referred to as "straight bankruptcy" or "liquidation" cases, and may be filed by an individual, corporation, or a partnership. Under chapter 7, a trustee is appointed to collect and sell all property that is not exempt and to use any proceeds to pay creditors. In the case of an individual, the debtor is allowed to claim certain property exempt. (See Question 12) The debtor gets a discharge, which means that the debtor does not have to pay certain types of debts. (See Questions 19, 20 and 21) Corporations and partnerships do not receive discharges. Consequently, any individuals legally liable for the partnership's or corporation's debts will remain liable. Therefore, these individuals may need to file individual bankruptcies as well as the corporation or partnership bankruptcy.

Chapter 9 is only for municipalities and governmental units, such as schools, water districts, and so on.

Chapter 13 is the debt repayment chapter for individuals with regular income whose debts do not exceed \$1,077,000 (\$269,250 in unsecured debts and \$807,750 in secured debts), including individuals who operate businesses as sole proprietorships. It is not available to corporations or partnerships. Chapter 13 generally permits individuals to keep their property by repaying creditors out of their future income. Each chapter 13 debtor proposes a repayment plan which must be approved by the court. The amounts set forth in the plan must be paid to the chapter 13 trustee who distributes the funds for a small fee. Many debts that cannot be discharged can still be paid over time in a chapter 13 plan. After completion of payments under the plan, chapter 13 debtors receive a discharge of most debts.

Chapter 12 offers bankruptcy relief to individuals, corporations, or partnerships who qualify as family farmers. There are debt limitations for chapter 12, and a certain portion of the debtor's income must come from the operation of a farming business. Family farmers must propose a plan to repay their creditors over a period of time from future income and it must be approved by the court. Plan payments are made through a chapter 12 trustee who also monitors the debtor's farming operations while the case is pending.

Chapter 11 is the reorganization chapter available to businesses and individuals who have substantial assets and/or income, to restructure and repay their debts. Creditors vote on whether to accept or reject a plan of reorganization which must be approved by the court. While the debtor normally remains in control of the assets, the court can order the appointment of a trustee for cause, such as when the debtor does not get a plan approved in a reasonable amount of time, or fails to follow some of the rules, or breaks the law. In addition to the filing fee paid to the bankruptcy clerk, a quarterly fee is paid to the U.S. Trustee in all chapter 11 cases. There is no debt limit under chapter 11. Due to the expense and complexity of chapter 11, the decision to file a chapter 11 petition should be made in consultation with an attorney.

5. What chapter is right for me?

You have a choice in deciding which chapter of the Bankruptcy Code will best suit your needs. The decision whether to file a bankruptcy, and under which chapter to file, depends on the particular circumstances of the debtor. In general, chapter 7 is appropriate when the debtor has insufficient income to pay all or most of his/her debts. Otherwise, if the debtor has an income or property and can afford to pay all or a substantial portion of his/her debts, chapter 11, 12, or 13 may be appropriate depending on whether the debtor is an individual, partnership, corporation, or family farmer. These are only a few of the factors to consider, however. These answers cannot spell out all the different things to be considered. Also, considering your personal facts, comparing them to each chapter's requirements, and deciding which chapter to select, would be giving legal advice. Clerk's Office staff, bankruptcy petition preparers, typing services and paralegals are prohibited by law from giving you legal advice. Only a lawyer can give you legal advice. Many lawyers will give you a free consultation, during which they will go over your circumstances and needs and tell you what you should do and how much it will cost for them to do it. The decision whether to file a bankruptcy and under what chapter is an extremely important decision and should be made only with competent legal advice from an experienced bankruptcy attorney after a review of all of the relevant facts of the debtor's case.

6. Where can I get more information concerning bankruptcy and bankruptcy procedure? Is there any place I can get free or low cost legal advice before I file?

The easiest way to get low or no-cost bankruptcy advice is to make an appointment with a private attorney. Many will provide a free initial consultation during which you can have your questions regarding bankruptcy procedures and their application to your situation answered. Low-cost help in typing your petition and other forms is available from "bankruptcy petition preparers." "Paralegals" and "typing services" are considered bankruptcy petition preparers. Bankruptcy petition preparers are not attorneys. Likewise, they are not employed or supervised by attorneys and cannot represent you in your bankruptcy. Only a licensed attorney can give you legal advice.

7. What services can a bankruptcy petition preparer provide?

Bankruptcy petition preparers are permitted to provide services limited to the typing of forms and filing of documents. These services are subject to various statutory requirements and limitations. For example, the Bankruptcy Code requires a bankruptcy petition preparer, within ten (10) days after the date of the filing of the petition, to file a declaration under penalty of perjury disclosing compensation received from or on behalf of the debtor and any unpaid fee charged to the debtor. Additionally, the bankruptcy petition preparer is required to sign and print the preparer's name, address and social security number on all documents prepared for filing. Please note that although

bankruptcy preparers are required to sign all documents prepared for filing, they are not authorized to sign any document on your behalf. Therefore, you (and if filing a joint petition, your spouse) must also sign all the documents. Copies of all prepared documents should be furnished to you by the bankruptcy petition preparer at the time they are presented to you for signature. Likewise, bankruptcy petition preparers are prohibited by law from collecting or receiving any court fees connected with the filing of your case. Consequently, all court fees connected with the filing of your case, including the filing fee, miscellaneous administrative fee, and chapter 7 trustee fee should be paid directly by you to the court. (See Question 15) The failure of any bankruptcy petition preparer to comply with the law should immediately be brought to the attention of any trustee appointed in your case and the local Office of the United States Trustee.

8. Can the clerk's office give legal advice?

A bankruptcy case is a legal proceeding affecting the rights of debtors, creditors and other parties in interest. According to Canon 4(D) of the Code of Conduct for Judicial Employees, Clerk's Office staff should not engage in the practice of law. Additionally, 28 U.S.C. § 955 prohibits Clerk's Office staff from giving information which may be characterized as legal advice. While there is no precise definition of legal advice, at a minimum it includes (1) acting on a person's behalf in presenting a claim or defense to a court, and (2) advising a person on the merits of a claim or defense and the state of the law applicable to it. Clerk's Office staff, therefore, will not provide information relating to: the application of laws and rules to individual claims or defenses; whether jurisdiction is proper in a particular court; whether a complaint properly presents a claim; what the "best" procedures are to accomplish a particular objective; or the interpretation of case law. Clerk's Office staff will not offer any opinion as to the probable disposition of any matter by the court. The information provided by Clerk's Office staff is limited to explaining the filing requirements of the court and reading, without comment, the actual text of a bankruptcy rule, local rule or statute.

9. What does the Clerk's Office do?

The Clerk's Office provides a variety of services to the bankruptcy judges, attorneys and the public. Clerk's Office staff provide clerical and administrative support to the court by filing and maintaining case-related papers, issuing process and writs, signing ministerial orders, collecting authorized fees, sending notices, entering judgments and orders, and setting hearings. The services provided by the Clerk's Office to attorneys and the public include responding to requests for information and making copies of papers in bankruptcy court files. Although Clerk's Office staff cannot give you legal advice, the U.S. Bankruptcy Court is a source for many forms and local rules which you will need to file your bankruptcy petition and related documents. Forms and local rules are also available on the U.S. Bankruptcy Court for the District of Kansas's Internet web site, located at www.ksb.uscourts.gov.

10. What documents do I need to start a bankruptcy?

A complete list of the documents you may need to start a bankruptcy case under chapter 7, chapter 11, chapter 12 or chapter 13 of the Bankruptcy Code, the number of copies to file, and the time you have to file them, is set forth in the [Court Copy Requirements and Filing Information](#) sheet. The particular documents you must file will depend upon the chapter you are filing as well as your individual circumstances. For example, if you are not represented by an attorney and did not have any documents prepared by a bankruptcy petition preparer, you will not be required to file a Disclosure of Compensation of Attorney for Debtor (Form B203), or a Disclosure of Compensation of Bankruptcy Petition Preparer (Form B280). Likewise, only individual, chapter 7 debtors whose schedules of assets and liabilities include consumer debts are required to file a Statement of Intention (Form B8). Similarly, a List of 20 Largest Unsecured Creditors (Form B4) is required in chapter 11 cases only, and Exhibit "A" to Voluntary Petition (Form B1, Exh. A) should be completed and attached to the voluntary petition only if the debtor is required to file periodic reports with the Securities and Exchange Commission pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 and is filing a chapter 11 case. Refer to the "Judge's Corner" section of the Court's web site (www.ksb.uscourts.gov) for forms/guidelines adopted by a particular Judge. If you need to start your case quickly, you can file only those documents designated as "NEW CASES (ALL CHPTS) WITHOUT SCHEDULES" in the [Court Copy Requirements and Filing Information](#) sheet. The remaining documents must be filed within the times indicated in the [Court Copy Requirements and Filing Information](#) sheet. Your failure to timely file all required documents or to seek an extension of time to do so may result in dismissal of your case, denial of your discharge, or the imposition of sanctions against you. The [Official Bankruptcy Forms](#) are available without charge on our Internet web site, located at www.ksb.uscourts.gov. Bankruptcy forms sets containing only the Official Bankruptcy Forms listed in the Court Copy Requirements and Filing Information sheet are available for purchase at local stationery stores. All forms and guidelines for specific judges are available at the Clerk's Office and on our Internet web site.

Tips For Completing Forms

- a. Petitions, schedules and statements of affairs and lists of creditors shall conform to the Official Bankruptcy Forms and be printed on one side of the paper only. All original documents and pleadings filed with the court shall be 2-hole punched at the top and shall **not** be stapled. Copies may be stapled together for distribution. Type the information on the forms. All forms should be legible, 8 ½ by 11 inches in size and printed on one side only.
- b. Respond to every question. If your answer to a question is "none," and there is no "none" box to check, put "N/A." Use continuation pages when you run out of room. Sign each form where required. If filing a joint case, make sure that your spouse signs, too.
- c. Prepare and file your creditor matrix in accordance with [Standing Order No. 99-1](#). A debtor may

also file a disk in the format set forth in the “Clerk’s Instructions for Submitting a Matrix on a Disk.” Every petition must be accompanied by a matrix in a form prescribed by the Clerk and adopted by Standing Order of the court. Names and complete addresses of creditors must be listed in alphabetical order. The first and succeeding pages of the matrix must list on the reverse side of the page the name of the debtor(s). Creditors shall be listed alphabetically with the full address of each, including post office box or street number, city or town, state and zip code. If it is known that the account or debt has been assigned or is in the hands of an attorney or other agency for collection, the full name and address of such assignee or agent shall be set forth. Each entry shall be separated by two spaces from the next succeeding entry. If the United States is listed as a creditor, the agency shall be noticed as provided by **Standing Order 99-2.**

d. On the schedules of current income and current expenditures of individual debtors, spousal income and expenditures must be completed in all cases filed by joint debtors and by a married debtor in chapter 7, 11, 12, or 13 cases, whether or not a joint petition is filed, unless the spouses are separated and a joint petition is not filed.

e. Make sure that you have the number of copies indicated in the **Court Copy Requirements and Filing Information** sheet. Unless otherwise ordered by the court, the debtor starts the case by filing an original, signed bankruptcy petition and accompanying statements, lists and schedules, and conformed copies:

- Original and four copies in cases under chapter 12;
- Original and three copies in cases under chapters 7 and 13;
- Original and five copies in cases under chapters 9 and 11.

f. Voluntary petitions and accompanying papers shall be assembled in the following order:

- Voluntary Petition (including certified copy of corporate resolution in corporate cases)
- Signature Page
- Statement of Financial Affairs
- Declaration Under Penalty of Perjury on Behalf of a Corporation or Partnership (if applicable)
- Exhibit A (if debtor is a corporation filing under chapter 11)
- List of Creditors Holding 20 Largest Unsecured Claims (to be used in chapter 11)
- Schedules A through J
- Summary of Schedules
- Declaration Concerning Debtor’s Schedules
- Chapter 7 Individual Debtor’s Statement of Intention
- Rule 2016(b) Statement of Attorney Compensation

The following documents must be included, but not stapled to the Petition:

- Application to Pay Filing Fees in Installments (if applicable)
- Matrix
- Matrix Verification
- Plan (if submitted when petition is filed in chapters 11, 12 and 13)

11. How do I know if a debt is secured, unsecured, priority or administrative so I can fill out my schedules correctly?

A. Secured Debt

A secured debt is a debt that is backed by property. A creditor whose debt is "secured" has a right to take property to satisfy a "secured debt." For example, most homes are burdened by a "secured debt." This means that the lender has the right to take the home if the borrower fails to make payments on the loan. Most people who buy new cars give the lender a "security interest" in the car. This means that the debt is a "secured debt" and that the lender can take the car if the borrower fails to make payments on the car loan.

B. Unsecured Debt

A debt is unsecured if you have simply promised to pay someone a sum of money at a particular time, and you have not pledged any property to secure that debt.

C. Priority Debt

A priority debt is a debt entitled to priority in payment, ahead of most other debts, in a bankruptcy case. A listing of priority debts is given, in general terms, in 11 U.S.C. § 507 of the Bankruptcy Code. Examples of priority debts are some taxes; wage claims of employees; debts related to goods and services provided to a debtor's bankruptcy estate during the pendency of a bankruptcy case; and alimony, maintenance or support of a spouse, former spouse, or child. If you have questions deciding which of your debts are entitled to priority status, you should consult an attorney.

D. Administrative Debt

An administrative debt is also a priority debt and is one created when someone provides goods or services to your bankruptcy estate. The best example of an administrative debt is the fee generated by an attorney or other authorized professional in representing the debtor's bankruptcy estate.

12. What are exemptions?

Section 522(b) of the Bankruptcy Code (Title 11, U.S.C.) allows an individual debtor to exempt real, personal, or intangible property from the property of the estate. Exempt assets are protected by state law from distribution to your creditors. The exemptions allowed under Kansas state law, and the dollar amounts of those exemptions, are listed in the Kansas Statutes Annotated at K.S.A. 60-2301 through

60-2314. Exemptions are claimed on Schedule C. As with all schedules, it is important to fully complete and provide all the information requested. If no one objects to the exemptions you have listed within the time frame specified by the bankruptcy court, these assets will not be a part of your bankruptcy estate and will not be used to pay creditors through your bankruptcy case unless you choose to sell the assets and pay the money received into your bankruptcy. Deciding which assets are exempt and how and if you can protect these assets from your creditors can be one of the more important and difficult aspects of your bankruptcy case. It is extremely important to consult an attorney if you have any questions regarding the issue of exempt assets.

13. Where do I file my bankruptcy case?

The bankruptcy court is a federal court. The federal court system divides the United States into judicial districts. Every state has at least one federal judicial district. Many have more. In Kansas, there is one federal judicial district, with three divisions. Each division has a fully staffed Clerk's Office. All three divisional Clerk's Offices are open from 9:00 a.m. until 4:00 p.m. on all days except Saturdays, Sundays and legal holidays. The public telephone numbers and mailing addresses for each divisional office are indicated below.

Kansas City Division
161 U.S. Courthouse
500 State Avenue
Kansas City, KS 66101-2417
(913) 551-6732

Topeka Division
240 U.S. Courthouse
444 S.E. Quincy
Topeka, KS 66683
(785) 295-2750

Wichita Division
167 U.S. Courthouse
401 North Market
Wichita, KS 67202
(316) 269-6486

14. How do I "file" a document with the court?

Bankruptcy petitions, pleadings and other papers may be submitted for filing: 1) by mail; 2) in person at the Bankruptcy Clerk's Office public counter during regular business hours of 9:00am through 4:00pm; or 3) by placing them in the door depository at the entrance to the Bankruptcy Clerk's Offices between the hours of 8:00am to 9:00am and 4:00pm to 5:00pm.

The document depository located outside the Federal Building is for United States District Court filings only. No bankruptcy filings are to be made at the outside document depository.

When extraordinary, compelling circumstances require delivery of a document to the Clerk's Office after hours, an emergency filing can be arranged by contacting the appropriate divisional Clerk's Office during business hours. The Clerk's Office does not accept documents for filing by facsimile. After completing, assembling, and copying your bankruptcy papers, mail or deliver the originals and required copies to the appropriate divisional Clerk's Office with your filing fee payment or a completed application to pay fees in installments. The Clerk's Office will conform one copy and return it to you. If your petition is submitted for filing by mail or by placing it in a document depository, please include a self-addressed, stamped envelope of sufficient size for return of your conformed copy. Parties may transmit briefs, lists of witnesses, exhibits and motions for extension of time by facsimile, but only in an emergency, and only if the judge to which the case or adversary proceeding has been assigned has granted permission prior to transmission. No other pleadings, documents or requests for relief may be transmitted and filed by facsimile. Facsimile transmissions must comply with **LBR 5074.1**. The court will authorize the use of facsimile transmissions between parties for nondispositive pleadings only for good cause shown.

An Adversary Proceeding Cover Sheet, in a form supplied by the Clerk, must be completed and submitted with each complaint commencing an adversary proceeding; the provisions of Fed. R. Bankr. P. 7003 apply. Pleadings, motions, briefs, and other papers submitted for filing must be typewritten, printed or computer-generated on letter-size paper (including all exhibits and/or attachments). All original documents and pleadings filed with the court must be 2-hole punched at the top and should not be stapled. Copies may be stapled together for distribution. All written, printed or computer-generated documents must be double-spaced with no smaller than 10 point type set no more than an average of 12 characters per inch. All pleadings and papers filed subsequent to those commencing a case must be endorsed on the upper right-hand corner of the first page with the case number. The title of such subsequent pleading or paper should describe the contents thereof, and state on whose behalf the document is filed. Fed. R. Bankr. P. 7010 and Official Form 16C apply to all pleadings and papers filed in adversary proceedings.

All orders submitted to the Court for signature should include, just prior to signatories, the following: "Dated this ____ day of _____, ____." A hearing date should be included in the body of the order only if there has been an actual hearing. If the order is submitted on a matter noticed out with opportunity for hearing, no objections filed and no hearing held, the order should so recite. All orders must have the following information at the top of a page bearing only signatures: 1) Name of court; 2) Case caption, case number and chapter; and 3) Name or caption of the order, and page number. Unless otherwise directed, orders are due ten (10) days from the date of an actual hearing or, if noticed with objection deadline and absent an objection, ten (10) days from expiration of the objection

deadline.

The original of every pleading, motion or other paper filed by an attorney shall bear the genuine signature of at least one attorney of record. The original of every pleading, motion or other paper filed by a party not represented by an attorney shall bear the genuine signature of such pro se party. Stamped or facsimile signatures on original pleadings, motions or other papers filed by pro se parties or by attorneys are not permitted. Parties or attorneys signing papers submitted for filing shall include their address and telephone numbers. Attorneys shall include their state supreme court registration numbers or in cases where the attorney is not admitted to practice in Kansas, their equivalents.

Each attorney or party appearing pro se (representing themselves) is under a continuing duty to notify the Clerk in writing of any change of address or telephone number. Any notice mailed to the last address of record of an attorney or party appearing pro se shall be sufficient notice.

All briefs and memoranda filed with the court shall contain:

- (1) A statement of the nature of the matter before the court.
- (2) A concise statement of the facts. Each statement of fact should be supported by reference to the record in the case.
- (3) A statement of the question or questions presented.
- (4) The argument, which shall refer to all statutes, rules and authorities relied upon.

At the time the original brief is filed, a working copy of the brief for use by the judge shall be delivered to the Clerk of the court or to the judge.

The matrix must be prepared and filed in accordance with **Standing Order No. 99-1**. A debtor may also file a disk in the format set forth in the "Clerk's Instructions for Submitting a Matrix on a Disk."

15. How much are the court fees to file a bankruptcy?

The fees for filing petitions under all chapters of the Bankruptcy Code are indicated on the **Court Copy Requirements and Filing Information** sheet. In addition to the filing fee, the court charges a \$15 trustee surcharge in chapter 7 cases and a \$30.00 miscellaneous administrative fee in all cases. You must pay the required fees regardless of your income. If you cannot come up with the full amount at the time of filing, you may pay the required fees in up to four installments over a period of one hundred twenty (120) days. To do so, you must complete an application to pay fees in installments and submit it with your petition. Application forms are available at each divisional Clerk's Office, as well as on our Internet web site at www.ksb.uscourts.gov. You cannot apply to pay fees in installments if you have already paid an attorney, a bankruptcy petition preparer, or anyone else to help you with your bankruptcy. Additionally, you cannot pay anyone for help with your case until all installments have been paid. The Clerk's Office does not accept personal checks issued by debtors. All installment payments should be made in the division where the petition was filed, by cash or cashier's check, certified check,

or money order payable to "Clerk, U.S. Bankruptcy Court." For your protection, do not send cash in the mail.

16. What happens after I file bankruptcy?

Upon filing the original petition with the Clerk's Office, the court's restraining order, called the automatic stay, immediately takes effect and prohibits all creditors from taking any collection action against the debtor or the debtor's property. Although the stay is automatic, creditors need to be advised of the stay. The court issues a notice to all creditors (on the matrix or list of creditors filed by the debtor) advising them of the filing of the bankruptcy, the case number, the automatic stay, the name of the trustee assigned to the case (if filed under chapter 7, 12, or 13), the date set for the meeting of creditors, the deadline, if any, set for filing objections to the discharge of the debtor and/or the dischargeability of specific debts, and whether and where to file claims. The exact information in the notice differs depending on the chapter under which the case is filed.

In a chapter 7 case involving an individual debtor, the creditors generally have sixty (60) days from the first date set for the meeting of creditors to object to the discharge of the debtor and/or the dischargeability of a specific debt. If the deadline passes without any objections to the debtor's discharge being filed, the court will issue the discharge order. If any objections to the dischargeability of specific debts are filed, they will be heard by the court, but will not delay the granting of a discharge with respect to other debts. An objection to discharge or to the dischargeability of certain debts is considered a separate lawsuit (an adversary proceeding) within the bankruptcy and may result in a trial before the judge assigned to the case. Corporate and partnership chapter 7 debtors do not receive discharges. If there is no property from which a dividend can be paid, the trustee will prepare a report of no distribution and the case will be closed. If there is property that is not exempt, funds will be available for distribution to creditors. The court will set claims deadlines and notify all creditors to file their claims. The trustee will proceed to collect the assets, liquidate (sell) them and distribute the proceeds to creditors. When all proceeds have been distributed, and all assets have been completely administered, the court will close the case.

In a chapter 13 case, creditors are given an opportunity to object to the plan. If no objection is filed by creditors or the trustee, the plan may be confirmed as filed. Once the plan is confirmed, the trustee will distribute the proceeds of the debtor's plan payments to creditors until the debtor completes the plan or the court dismisses or converts the case. Upon completion of the chapter 13 plan, the court will issue a discharge order, the trustee will prepare a final report, and the case will be closed.

In a chapter 12 case, the confirmation hearing generally must be concluded within forty-five (45) days of filing the plan. The court may consider dismissal of the case if a plan is not confirmed.

In a chapter 11 case, a debtor's conference is held with the United States Trustee's staff before the creditors' meeting. At the debtor's conference, the United States Trustee will go over the responsibilities

and restrictions on the debtor (called the “debtor-in-possession”), explain the quarterly fees and monthly operating reports, and generally discuss the financial situation of the debtor and the scope of the anticipated plan of reorganization. A disclosure statement must be filed with the plan and approved by the court before votes for and against the plan can be solicited. After the estate has been fully administered, the court enters a final decree closing the case. A chapter 11 estate may be considered fully administered and closed before the payments required by the plan have been completed.

17. What is a bankruptcy trustee? Who is the United States Trustee? What is the difference?

In all chapter 7, 12, 13 and in some chapter 11 cases, a case trustee is assigned. In chapter 7 cases they are called "Panel Trustees." In chapter 12 and 13 cases they are called "Standing Trustees." The trustee's job is to administer the bankruptcy estate, to make sure creditors get repaid as much as possible, and to run the first meeting of creditors (also called the "section 341 meeting" because 11 U.S.C. § 341 of the Bankruptcy Code requires that the meeting be held). The trustee either collects and sells non-exempt estate property, as in a chapter 7 case, or collects and pays out money on a repayment plan, as in a chapter 13 case. The trustee can require you to provide, under penalty of perjury, information and documents, either before, after, or at the meeting of creditors. You should always cooperate with the trustee, since failure to cooperate with the trustee could be grounds to have your discharge denied. Trustees are not necessarily lawyers, and they are not paid by the court. They are appointed by the United States Trustee. Trustees report to the court, but their fees come out of the bankruptcy filing fee or as a percentage of the money distributed in the bankruptcy.

The United States Trustee's Office is part of the U.S. Department of Justice, and is separate from the court. The United States Trustee's Office is a watchdog agency, charged with monitoring all bankruptcies, appointing and supervising all trustees, and identifying fraud in bankruptcy cases. The United States Trustee's Office cannot give you legal advice, but they can give you information about the status of a case, and you can contact them if you are having a problem with a trustee, or if you have evidence of any fraudulent activity. In monitoring cases, the United States Trustee reviews all bankruptcy petitions and pleadings filed in cases, and participates in many proceedings affecting the case, but they do not administer the case themselves. They can bring motions in the bankruptcy, such as ones to dismiss the case, or to deny the debtor's discharge.

18. What is the creditors' meeting? What can I expect will happen at it?

A "meeting of creditors" is the single hearing all debtors must attend in any bankruptcy proceeding. It is held outside the presence of the judge and usually occurs between twenty (20) and forty (40) days from the date the original petition is filed with the court. In chapter 7, chapter 12, and chapter 13 cases, the trustee assigned by the court on behalf of the United States Trustee conducts the meeting. In chapter 11 cases where the debtor is in possession and no trustee is assigned, a representative of the

United States Trustee's office conducts the meeting. The meeting permits the trustee or representative of the United States Trustee's Office to review the debtor's petition and schedules with the debtor face-to-face. The debtor is required to answer questions under penalty of perjury concerning the debtor's acts, conduct, property, liabilities, financial condition and any matter that may affect administration of the estate or the debtor's right to a discharge. This information enables the trustee or representative of the United States Trustee's Office to understand the debtor's circumstances and facilitates efficient administration of the case. Additionally, the trustee or representative of the United States Trustee's Office will ask questions to ensure that the debtor understands the positive and negative aspects of filing for bankruptcy. The meeting is referred to as the "meeting of creditors" because creditors are notified that they may attend and question the debtor about the location and disposition of assets and any other matter relevant to the administration of the case. However, creditors rarely attend these meetings and, in general, are not considered to have waived any of their rights by failing to appear. The meeting usually lasts only a few minutes and may be continued if the trustee or representative of the United States Trustee's Office is not satisfied with the information provided by the debtor. If the debtor fails to appear and provide the information requested at the meeting, the trustee or representative of the United States Trustee's Office may request that the bankruptcy case be dismissed or that the debtor be ordered by the court to cooperate or be held in contempt of court for willful failure to cooperate.

19. What is a discharge?

The discharge order is issued by the court and permanently prohibits creditors from taking action to collect dischargeable debts against the debtor personally; this does not prevent secured creditors from seizing collateral if payments are not kept up, or other creditors from pursuing property of the estate. Some debts are not dischargeable, and others may be found to be non-dischargeable depending on particular circumstances.

In a chapter 7 case, the bankruptcy court will order that the debtor be discharged of all dischargeable debts once the time for filing complaints objecting to discharge has expired unless: The debtor is not an individual; or a complaint objecting to the debtor's discharge has been filed; or the debtor has filed a waiver of discharge.

In chapter 11 cases, the confirmation of a plan of reorganization discharges the debtor from dischargeable debts that arose before the date of the order of relief unless: the plan or order confirming plan provides otherwise; or the plan is a liquidating plan and the debtor would be denied a discharge in a chapter 7 case under 11 U.S.C. § 727.

In chapter 12 and chapter 13 cases, the court will order that the debtor is discharged of dischargeable debts after the debtor has completed all payments under the plan, or prior to plan completion, after notice and hearing, if the requirements of 11 U.S.C. §§ 1228(b) or 1328(b) have been met.

The granting of a discharge does not automatically result in the closing of a case. All contested matters, adversary proceedings, and appeals must be resolved and the appointed trustee or debtor-in-possession must file a final report and account and request entry of a final decree before the Clerk's Office will close the case.

20. What debts are dischargeable?

All debts are dischargeable except for those listed in 11 U.S.C. § 523. In a chapter 13 case, even more debts may be discharged if the debtor obtains a discharge under 11 U.S.C. §1328(a). The non-dischargeable debts listed in § 523 include: certain taxes and fines; debts created through fraudulent conduct or by providing false information to a creditor; debts not listed in your bankruptcy petition; alimony, child maintenance or support, and certain debts arising out of a divorce decree or separation agreement; debts from willful and malicious injury to another; government guaranteed student loans unless it would impose an undue hardship; debts caused by the death or a personal injury related to the operation of a motor vehicle while you were intoxicated; and post bankruptcy condominium or cooperative owners' association fees. This list includes many examples of non-dischargeable debts but you should review 11 U.S.C. § 523 for a complete list. Some debts listed in 11 U.S.C. § 523, such as those based on fraudulent conduct, embezzlement or willful and malicious injury to another, are discharged unless a complaint to deny discharge of that debt is timely filed with the bankruptcy court. Ordinarily, these complaints must be filed within sixty (60) days of the first date set for the meeting of creditors. Additionally, debts that were not listed on your bankruptcy schedules or that were incurred after you filed bankruptcy are generally not discharged.

21. What is the difference between a denial of discharge and a debt being non-dischargeable?

A discharge can be denied by the court either for one particular debt or for all debts. For a discharge to be denied, either as to a particular debt (see Question 20 about particular debts that are not dischargeable) or as to all debts, someone must file an adversary proceeding (lawsuit) with the court. In a lawsuit to deny the discharge as to all debts, the person who brings the action must prove to the court that the debtor did one of the following: (1) transferred, concealed, removed, destroyed or mutilated property of the debtor, (within one year before the bankruptcy was filed) or after the bankruptcy was filed; or (2) concealed, destroyed, mutilated, falsified, or failed to keep and preserve books and records about the debtor's financial condition or business transactions; or (3) the debtor made a false statement while under oath, (in writing or orally); or (4) failed to turn over books and records; or (5) failed to explain the loss of assets; or (6) had received a previous bankruptcy discharge within six (6) years.

22. What does it mean if a case is dismissed?

A dismissal order ends the case. Upon dismissal the "automatic stay" ends and creditors may start to collect debts, unless a discharge is entered before the dismissal and is not revoked. An order of dismissal itself will not free the debtor from any debt. Often, a case is dismissed when the debtor fails to do something he/she must do (such as show up for the creditors' meeting, answer the trustee's questions honestly, produce books and records the trustee requests), or if it is in the best interests of the creditors. Unless the debtor appeals the order or seeks reconsideration of the order within ten (10) days after entry of the order, the Clerk will automatically close the case.

23. What is a reaffirmation agreement?

A reaffirmation agreement is an agreement by which a bankruptcy debtor becomes legally obligated to pay all or a portion of an otherwise dischargeable debt. Such an agreement must generally be filed within sixty (60) days after the first date set for the meeting of creditors. If the reaffirming debtor is represented by an attorney, the agreement is filed with an affidavit of the attorney which complies with 11 U.S.C. § 524(c)(3). No hearing for approval of such an agreement is necessary. If the reaffirming debtor is not represented by an attorney, the debtor or creditor must file an application for approval of the agreement, along with a request for hearing. An order approving the agreement should be brought to the hearing. You must appear in person at the hearing. The judge will ask you questions to determine whether the reaffirmation agreement imposes an undue burden on you or your dependents and whether it is in your best interests. Since reaffirmed debts are not discharged, the bankruptcy court will normally only reaffirm secured debts where the collateral is important to your daily activities. Reaffirmation agreements are strictly voluntary. They are not required by the Bankruptcy Code or other state or federal law. You can voluntarily repay any debt instead of signing a reaffirmation agreement, but there may be valid reasons for wanting to reaffirm a particular debt. Since a reaffirmation agreement takes away some of the effectiveness of your discharge, legal counsel is advisable before agreeing to a reaffirmation. Even if you sign a reaffirmation agreement, you have a minimum of sixty (60) days after the agreement is filed with the court to change your mind. If your discharge date is more than sixty (60) days after the agreement is filed with the court, you have until your discharge date to change your mind. If you reaffirm a debt and fail to make the payments as agreed, the creditor can take action against you to recover any property that was given as security for the loan and you may remain personally liable for any remaining debt.

24. What is a redemption?

Redemption allows an individual debtor (not a partnership or a corporation) to keep tangible, personal property intended primarily for personal, family, or household use, by paying the holder of a lien on the property the amount of the allowed secured claim on the property, which typically means the value of

the property. Otherwise, in order to keep the property, the debtor would have to pay the entire amount of the secured creditor's debt, do a reaffirmation agreement and become legally obligated on the debt again. The property redeemed must be claimed as exempt or abandoned. With redemption, a debtor can often get liens released on personal household possessions for much less than the underlying debt on those secured possessions. Unless the creditor consents to periodic payments, redemption must generally be made in one lump sum payment to the creditor. If the debtor and creditor agree to the redemption, just a consent order of redemption is required. If the redemption is opposed, a motion for redemption and a request for hearing should be filed. A motion to redeem exempt property or abandoned property in a chapter 7 case pursuant to § 722 of the Bankruptcy Code shall be filed not later than 60 days from the first date set for the meeting of creditors called pursuant to § 341. However, if the trustee recovers exempt property that the debtor is entitled to exempt, the motion shall be filed not later than 15 days after the property is deemed exempt. If the trustee has not abandoned the property within the 60 days, the motion shall be filed not later than 15 days after an abandonment done after the 60 days.

25. What are claims and claim objections? How are claims filed?

A. Claims

In the broadest sense, a claim is any right to payment held by a person or company against you and your bankruptcy estate. A claim does not have to be a past due amount but can include an anticipated sum of money which will come due in the future. In filling out your Schedules, you should include any past, present or future debts as potential claims.

B. Claims Objections

You are entitled to object to any claim filed in your bankruptcy case if you believe the debt is not owed or if you believe the claim misrepresents the amount or kind of debt (e.g. secured or priority) which you owe. In some circumstances, an objection to claim can be initiated by filing a motion in the bankruptcy court; in other circumstances, it must be initiated by filing an adversary proceeding (like a lawsuit in your bankruptcy case). If you anticipate objecting to claims, you should seek the advice of an attorney as soon as possible since the objection process can be complicated and time sensitive.

C. Filing of Claims

The written statement filed in a bankruptcy case setting forth a creditor's claim is called a proof of claim. The proof of claim should include a copy of the obligation giving rise to the claim as well as evidence of the secured status of the debt if the debt is secured. Under the Federal Rules of Bankruptcy Procedure, with limited exceptions, claims filed by creditors, except governmental units, in chapter 7, 12 and 13 cases must be filed within ninety (90) days after the first date set for the meeting of creditors. Claims of governmental units must be filed within one hundred eighty (180) days of the date the petition was filed.

If a creditor files a claim after the specified deadline, you may object to the claim as being untimely filed. For purposes of obtaining your discharge, it may be important for you to file a claim on behalf of a creditor if that creditor should fail to do so. Under the Federal Rules of Bankruptcy Procedure, you (or in chapter 7 and some 11 cases, the trustee) may file a proof of claim on behalf of a creditor within thirty (30) days after the last day for filing claims.

26. What can I do if a creditor keeps trying to collect money after I have filed bankruptcy?

If a creditor continues to attempt to collect a debt after the bankruptcy is filed in violation of the automatic stay, you should immediately notify the creditor in writing that you have filed bankruptcy, and provide the creditor with either the case name, number and filing date, or a copy of the petition that shows it was filed. If the creditor still continues to collect, the debtor may be entitled to take legal action against the creditor to obtain a specific order from the court prohibiting the creditor from taking further collection action and, if the creditor is willfully violating the automatic stay, the court can hold the creditor in contempt of court and punish the creditor by fine or incarceration. Any such legal action brought against the creditor will be complex and will normally require representation by a qualified bankruptcy attorney.

27. How do I change or correct information in the petition, schedules and statements I already filed with the clerk's office?

The information contained in your petition, schedules, and statement of affairs is submitted under penalty of perjury. Therefore, you must be certain that it is correct when you sign these documents. If, however, you later discover that something is inaccurate, the documents may be corrected by the filing of an amendment with the Clerk's Office. See **LBK 1009.1** on Amendments of Voluntary Petitions, Lists of Creditors, Schedules and Statements. A fee of \$20.00 must be paid for amendments to schedules of creditors or lists of creditors.

28. How many years will a bankruptcy show on my credit report? How long will it take before I can get credit?

The bankruptcy petition, schedules and plan are public documents and are available to the general public for viewing. Credit reporting agencies regularly collect information from the petitions filed and report the information on their credit reporting services. Bankruptcies normally will remain on your credit report for up to ten (10) years and may be taken into consideration by any person reviewing a credit report for the purpose of extending credit in the future. The decision whether to grant you credit in the future is strictly up to the creditor and varies from creditor to creditor depending on the type of

credit requested. There is no law which prevents anyone from extending credit to you immediately after the filing of a bankruptcy nor are creditors required to extend you credit. The best way for you to obtain credit in the future is to generate an adequate and regular income and pay all of your financial obligations in a timely and responsible manner. Many creditors will not deal with you in the future unless you have already established credit with someone else and demonstrate that you are a reliable debtor. In general, it is recommended that after the filing of a bankruptcy, one learn to live within his/her income and not request credit which is not absolutely necessary.

29. How can I get information about a case?

Case information may be obtained by using one of the court's automated case information systems, or by telephoning, writing, or visiting the Clerk's Office.

A. Obtaining Case Information From an Automated Case Information System

To permit you around-the-clock access to case information, the Clerk's Office has installed three automated case information systems.

1.The U.S. Bankruptcy Court for the District of Kansas's Voice Case Information System, or VCIS, uses a computer-generated synthesized voice device to read case summary information directly from the court's computer in response to touch-tone telephone inquiries. VCIS is provided free of charge and may be accessed by dialing 1-800-827-9028.

2.The U.S. Bankruptcy Court for the District of Kansas's Internet Web Pacer (pacer.ksb.uscourts.gov), provides public access to bankruptcy case information and imaged documents in the court's system on the Internet. Web Pacer users are charged \$.07 per page for usage of electronic access to court data obtained through a federal judiciary internet web site. You must have a login-id and password issued by the Pacer Support Center (pacer.psc.uscourts.gov) to access the Web Pacer system. Additional information concerning Web Pacer may be obtained at any divisional Clerk's Office, and is available on our Internet web site at www.ksb.uscourts.gov.

3.The U.S. Bankruptcy Court for the District of Kansas's dial-in Public Access to Court Electronic Records information system, or Pacer, permits the use of any terminal or computer, a modem, and communications software to dial the court's computer and access lists of newly filed cases, case summary information, and docket entries. Pacer users are charged \$.60 per minute for usage of electronic access to court data via dial-in service. You must have a login-id and password issued by the Pacer Support Center (1-800-676-6856) to access the Pacer system. Additional information concerning Pacer may be obtained at any divisional Clerk's Office.

B. Obtaining Case Information By Telephoning the Clerk's Office

Basic case information that you are unable to access using an automated case information system may be obtained free of charge by calling the divisional Clerk's Office in which the case is pending during the hours indicated below. You can determine which office to call by looking at the case number. The

case number identifies many things. The first two digits represent the calendar year that the case was filed, and the next digit following the hyphen will determine the city where the case is filed.

1 = Wichita	01-12345-7
2 = Kansas City	01-22345-11
4 = Topeka	01-42345-13

The remaining four digits are unique to each case. Following the seven digit case number is the chapter identification.

Kansas City Division
9:30 a.m. to 3:30 p.m.
(913) 551-6732

Topeka Division
9:30 a.m. to 3:30 p.m.
(785) 295-2750

Wichita Division
9:30 a.m. to 3:30 p.m.
(316) 269-6486

As a general rule, all information other than basic case information requires a physical search of the court's records. If a physical search of the court's records is required, you must pay a \$20.00 search fee for every name or item to be searched before the Clerk's Office will provide the requested information. Requests for information subject to the search fee should be made in writing. You may, however, obtain the information free of charge in most cases by coming to the Clerk's Office and conducting your own search.

C. Obtaining Case Information By Writing the Clerk's Office

To obtain case information by mail, send a written request containing the case number, the case name, the information you request, your name, address, a telephone number where you can be reached during business hours and the best time to call, with a self-addressed, stamped envelope. Written requests for information requiring a physical search of the court's records should be accompanied by a cashier's check, certified check, or money order sufficient to cover the applicable search fee. There is also a \$.50 per page copy fee.

D. Obtaining Case Information By Visiting the Clerk's Office

As a general rule, all documents in the court's case files and all court dockets (a list of brief entries made to record activity in a case) are public record and available to the public for inspection. Files and dockets may be reviewed at the Clerk's Office public counters during business hours (9:00am to 4:00pm). When reviewing hard copy (paper) files, please remember that not all documents are located

in the main, or "parent," bankruptcy case file. Adversary proceedings, chapter 11 monthly operating reports, and proofs of claim filed in chapter 11 cases may be kept in separate file folders. In chapter 7 and chapter 13 cases, proofs of claim are generally found on the left side of the first volume of the parent case file folder. However, due to their number, they are at times kept in separate file folders. Paper documents are placed in file folders from the bottom up in chronological order. In other words, the document initiating the case will be the one on the bottom of the first volume of the hard copy file.

UNDER NO CIRCUMSTANCES MAY YOU REMOVE FILES FROM THE FILE REVIEW AREA OR REMOVE DOCUMENTS FROM FILES.

All files must be returned in proper order. The Clerk's Office is the keeper of the court's records and is responsible for maintaining their accuracy and integrity. Removal of files from the file review area, removal of documents from files or failure to return files in proper order will be deemed sufficient grounds to refuse to provide you with additional files. The court docket is a list of brief entries made to record the activity in a case. It contains information concerning the parties involved, filing fees paid, deadlines set, hearings held, and documents filed in the case. For each order and judgment filed, the date the order or judgment was recorded, or entered, on the docket is indicated. Documents are listed on court dockets in chronological order from the top down. The document initiating the case will be the first one listed below the names and addresses on the first page of the docket. There is a \$.50 per page charge for printed dockets. Printed dockets may be picked up at the public counter. Due to limited storage space, closed case files and "hard copy" dockets are archived by periodically shipping them to the Federal Records Center in Kansas City, Missouri for storage. Files and dockets stored at the Federal Records Center may be recalled to the Clerk's Office and reviewed in the Clerk's Office file review area. A \$25.00 fee will be charged for each record retrieved from the Federal Records Center by the Clerk's Office. This fee must be paid before the Clerk's Office will recall a record. Alternatively, you may travel to the Federal Records Center in Kansas City, Missouri, to review the archived file or docket. All personal visits to the Federal Records Center are by appointment only. Appointments may be made by calling (816) 926-7272 between 8:00a.m. and 3:00 p.m., Monday through Friday (except federal holidays), and must be requested at least 24 hours in advance. You must first obtain the file or docket location, box, and accession numbers from the Clerk's Office (there is a \$20 search fee) and provide them to the Federal Records Center receptionist at the time you make your appointment. For more information concerning reviewing files at the Federal Records Center, please see a copy of **Reviewing Court Case Files at the National Archives and Records Administration.**

E. Getting Copies of Papers from Locally Stored Case Files

Open case files and recently closed case files are locally stored. Copies of papers in locally stored case files may be obtained by mail or in person at the Clerk's Office public counter. To obtain copies by mail, a written request containing the case number, the case name, the title of the documents you wish copied, your name, address, a telephone number where you can be reached during business hours and the best time to call, must be sent to the Clerk's Office with a self-addressed, stamped envelope and a cashier's check, certified check or money order for the appropriate fee payable to "Clerk, U.S. Bankruptcy Court." A \$20.00 per name or item search fee plus a \$.50 per page photocopy fee will be

charged to obtain copies by mail. An additional fee of \$7.00 per document will be charged if certified copies are needed. Payment is due at the time documents are printed and shall be made in the form of cash, money order, cashier's check or attorney's trust account check. The Clerk's Office will not accept personal checks or make change. Cash payments must, therefore, equal the amount due. To obtain copies in person at the Clerk's Office, you can request the copies or you may use the coin operated photocopy machines located in each divisional Clerk's Office file review area, unless certified copies are needed. Copies made using the coin operated photocopy machines cost \$.25 per page. **DO NOT REMOVE DOCUMENTS FROM FILES TO PHOTOCOPY ---FOLD THEM OVER INSTEAD.**

F. Getting Copies of Papers from Archived Files

Copies of papers in archived files may be obtained from the Clerk's Office in the same manner as copies of papers in locally stored case files. A \$25.00 per record archive retrieval fee plus a \$.50 per page photocopy fee will be charged for copy work requested by mail. An additional \$7.00 per document fee will be charged for certified copies. Likewise, you may use the coin-operated, public lobby photocopy machines to copy papers in case files recalled to the Clerk's Office from the Federal Records Center unless certified copies are needed. Certified copies of documents in these files will be subject to the same \$.50 per page photocopy and \$7.00 per document certification fees as papers in locally stored cases. Alternatively, you may obtain copies of papers in archived files by visiting the Federal Records Center in Kansas City, Missouri. The cost for copy work at the Federal Records Center is \$.50 per page. An additional fee of \$10.00 per certification will be charged if certified copies are needed. You must obtain the same information concerning the file from the Clerk's Office that you would need to view the file, and contact the Federal Records Center to schedule an appointment. Please see a copy of **Reviewing Court Case Files at the National Archives and Records Administration**.

The Federal Records Center will also accept mail and FAX requests for photocopies of archived personal and corporate bankruptcy case files and forward the copies to the requestor via mail or FAX. You may request photocopies of the entire contents of an archived case file, a package of common documents, or specific documents listed on the docket sheet obtained from the court. For more information concerning requests by mail or FAX for copies of papers from personal and corporate bankruptcy case files, please see a copy of **Reviewing Court Case Files at the National Archives and Records Administration**.

The Federal Records Center also accepts telephonic requests for copies if the caller has (1) obtained the location code and (2) can authorize the copy work with a valid credit card number.